

REMARKS/ARGUMENTS

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-50 are pending in the application. Claims 1, 10, 11, 15, 22, 30, 34, 39 and 42 are independent claims. Claim 50 is canceled by this Amendment.

Allowable Subject Matter

Applicants note with appreciation the indication on page 15 of the 8/21/2009 Office Action that claims 10, 14, 18-21, 29, 33, 36-39 and 49 are either allowable or would be allowable if rewritten into independent form. In view of the remarks below, an indication of allowance for each of claims 1-50 is respectfully requested.

Double Patenting

Claims 22, 42 and 50 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being obvious over claims 1-36 of co-pending Application No. 10/516,327. Applicants respectfully request that this rejection be held in abeyance until all other substantive issues in this case have been resolved. At that time, the Applicants will immediately provide a copy of a terminal disclaimer to the Examiner to overcome this rejection, if needed. The filing of a terminal disclaimer or offer to file a terminal disclaimer in this case does not constitute an admission of the propriety of the obviousness-type double patenting rejection. See MPEP § 804.02 and *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).

35 U.S.C. § 112, 1st Paragraph Rejection

Claim 50 is rejected under 35 U.S.C. § 112, first paragraph, because the specification allegedly does not provide support for the amended claims. By the present Amendment, claim 50 has been canceled. Accordingly, this rejection is now moot and should be withdrawn.

35 U.S.C. § 102(e) - Gainey

Claims 1-9, 11-13, 15-17, 22-28, 30-32, 34, 35 and 40-48 are rejected under 35 U.S.C. § 103(a) as allegedly being anticipated by U.S. Publication No. 2004/0157551 ("Gainey"). Applicants respectfully traverse this rejection for at least the following reasons.

U.S. Provisional Patent Application 60/390,094 is not Prior Art

After further reviewing the applied reference (U.S. Patent Pub. No. 2004/0157551 by Gainey et al.) and its related priority case, Applicants note that Provisional Application 60/390,094 filed June 21, 2002 has James A. Proctor and Kenneth M. Gainey listed as the inventors. The present application has the same inventorship as Provisional Application 60/390,094. Additionally, the present application claims priority from Provisional Application 60/418,288, filed October 15, 2002, which predates the filing date of June 20, 2003 of U.S. Patent Pub. No. 2004/0157551, which claimed priority to Provisional Application 60/390,094. Accordingly, since the inventorship of Provisional Application 60/390,094 is the same as the present application, it cannot be relied upon as prior art under 35 U.S.C. §102(e), which requires that the patent application be "by another filed in the United States". Accordingly, Applicants respectfully submit the foregoing rejections which rely on Provisional Application 60/390,094 and the subject matter contained therein are improper and respectfully requests withdrawal of each of these rejections.

Reconsideration and issuance of the present application is respectfully requested.

CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue, or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026. If a fee is required for an extension of time under 37 CFR 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

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Respectfully submitted,

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